

REMARKS

Sequence Requirements:

The sequence on Page 11, line 7 is SEQ ID NO:41. The specification has been amended accordingly.

Rejection under §112, first paragraph:

Applicant respectfully traverses the rejection. The phrase “does not cross-react with an epitope from other non-pathogenic *Listeria* species” is not new matter, but is supported by the specification as originally filed.

On page 3, lines 1-3 of the specification, it is stated that polyclonal antibodies are “unsuitable for specifically detecting *L. monocytogenes* by immunological processes” when they “also react with the p60 protein of other, non-pathogenic *Listeria* species.” (Underling added.) The specification then describes an “elaborate” method for obtaining “an *L. monocytogenes*-specific serum.” Page 3, lines 8-14. Finally, it is concluded that: “It has thus far not been possible to obtain antibodies in a targeted manner against epitopes which are specific for *L. monocytogenes*.” (Underling added.) Page 3, lines 14-16. The specification further states that the invention relates to antibodies for the immunological detection of the species *L. monocytogenes*. See, e.g., Specification, Page 6, lines 16-20; Examples 13-14 on Pages 20-21. Therefore, the skilled worker would have recognized that specific detection of *L. monocytogenes* in accordance with the present invention would have involved an antibody that “does not cross-react with an epitope from other non-pathogenic *Listeria* species.”

If a skilled artisan would have understood the inventor to be in possession of the claimed invention at the time of filing, even if every nuance of the claims is not explicitly described in the specification, then the adequate description requirement is met. See, e.g., *Vas-Cath*, 935 F.2d at 1563, 19 USPQ2d at 1116; *Martin v. Johnson*, 454 F.2d 746, 751, 172 USPQ 391, 395 (CCPA

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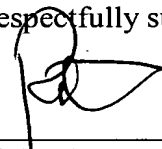
1972) (stating "the description need not be in *ipsis verbis* [i.e., "in the same words"] to be sufficient"). See, M.P.E.P. 2163.

It is noted that Claim 42 as been amended by replacing the term "cross-react," with "react." This amendment does not change the scope of the claims, but simply uses the term that was literally recited in the specification, as quoted above from Page 3.

In view of the above remarks, favorable reconsideration is courteously requested. If there are any remaining issues which could be expedited by a telephone conference, the Examiner is courteously invited to telephone counsel at the number indicated below.

The Commissioner is hereby authorized to charge any fees associated with this response or credit any overpayment to Deposit Account No. 13-3402.

Respectfully submitted,



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